IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 201 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
No

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
No

5. Whether it is to be circulated to the Civil Judge? No :

DHANLAXMIBEN JITENDRAPRASAD

Versus

EMPLOYEES STATE INSURANCE CORPORATION

Appearance:

MR. H.M.PATEL for MR AJ PATEL for Petitioners

MR SR SHAH for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 23/03/2000

ORAL JUDGEMENT

1. This is Applicant's Appeal against the Judgment and Order dated 21.8.1979 of Employees' Insurance Court, Ahmedabad, refusing to declare dependency benefits to the applicants- appellants on account of alleged death, of

Jitendraprasad Chhotalal, which was alleged to have occurred in the course of his employment.

2. Brief facts giving rise to this appeal are that Jitendraprasad Chhotalal, an insured person, was working as employee in Ahmedabad - Sarangpur Mills Co.Ltd. as Kanta Karkoon. His duty hours were from 7.00 a.m. to 6.00 p.m. with recess from 11.30 a.m. to 2.00 p.m. On 19.4.1976 the deceased attended his duty in the aforesaid Mill at 7.00 a.m. and worked till 11.30 a.m. On account of mental and physical strain he informed his colleague Gotambhai Thakorlal Patel that he would be going to his home in the recess and take some rest and get rid of tireness and return to his job. At about 11.30 a.m. on that date he boarded bus of Route No.2 to reach his house and alighted from the bus near Model Cinema to walk down to his residence. On way to his residence near Balahanuman he stumbled presumably by something on the road that may have knocked his foot and it is alleged that he got reelings and fell down there with the resutl that his thigh bone, namely, femur got dislocated. According to the appellants all this happened because of strain of work in the course of employment. Initial treatment was given by one Noormohmed Haji Nabibax, Bone setter, who opined that it was a case of dislocation of bone of right thigh. 90 days rest was advised by him. Intimation was given to the officers of the Mill on 20.4.1976. On 26.8.1976 he was under treatment at Bapunagar General Hospital where he expired. It was alleged that the cause of death was injury sustained in the accident which arose out of and in the course of his employment. It was also alleged that it was general practice for the clerks to go home during recess for lunch and rest. It was alleged that the deceased while going home during recess met with an accident and sustained injuries on account of which he died.

3. The claim was resisted on several grounds. It was denied that the death occurred on account of accident and that the sickness complained of had no connection with the employment of the deceased and that the injury could not be said to be the injury sustained in the course of or in connection with employment. With these averments it was pleaded that the claimants are not entitled to any relief.

4. The Employee Insurance Court found that the injury was caused to Jitendraprasad Chhotalal on account of accident, but this injury did not result in his death on 26.8.1976. The court below further found that the accidend did not occur in the course of employment of the

deceased. It further found that the claimants are the dependents of the deceased within the meaning of Employees Insurance Act. With these findings the Application was dismissed, hence this Appeal.

5. Shri S.R.Shah, learned Counsel for the respondent contended that the case is fully covered by the Apex court's decision in the case of Regional Director, ESI Corporation & anr. v/s. Francis De Costa and anr., reported in AIR 1997 SC 432, whereas Shri H.M.Patel appearing for Mr.A.J.Patel contended that on facts the case before this Court is distinguishable from the facts of the case before the Apex Court. He has placed reliance upon a decision of Calcutta High Court in P.E.Devis and Co. v/s. Kesto Routh, reported in AIR 1968 Cal. 129.

6. The appellants can succeed only on establishing three things. The first is that there was accident in which the deceased sustained injuries. This is fully established from the evidence on record. The second point to be established by the appellants is that the accident had casual connection with the employment and the third condition is that the accident must have occurred in the course of employment. Unless these three things are established, it would be difficult for the appellants to succeed. As pointed out above the first condition has been established by the appellants. However, the remaining two conditions do not appear to have been successfully established by the appellants either before the Court below or in the course of argument before me.

7. The 2nd and 3rd conditions referred to above which have been mentioned in the Apex Court's judgment in Regional Director, E.S.I. Corporation (Supra) are practically over laping. It has to be established by the appellants that the accident occurred in connection with employment and in the course of employment. The appellants have to establish further that the accident had some casual connection with the death of deceased.

8. On the point of cause of death the Court below found that it is difficult to hold that the death of the deceased was due to injury he had sustained by fall, namely, fracture of femur. Learned Counsel for the appellant contended that this finding is totally erroneous and contrary to medical evidence on record. He has referred to the statement of Dr.Dilip G. Almola at Ex.11. At the out-set it may be mentioned that he is a General Practitioner. He did not think that the fracture of femur was so serious that the alleged complaint of

pain in the chest could have some nexus with cardiac failur or likely cardiac arrest or some pulmonary trouble. On the other hand initially he suspected that the complaint of pain in the chest by the deceased was on account of cold. Subsequently he suspsected that it may be due to bronchitis from which the deceased was suffering. Admittedly from his statement it is clear that no investigation was conducted by him nor did he refer the patient for further examination and investigation by any heart Specialist. My attention was drawn to the statement of this witness in cross examination and it was urged by Shri Patel that the witness has admitted that conjested cardiac failure may occur due to fracture and diabetes. In the last part of the cross examination he stated that if the patient had a fracture and is having diabetes the death may occur by congested cardiac failure. In the very next sentence this Doctor has stated that the congested cardiac failure can not take place on account of fracture and diabetes. Consequently it is clear that in the very next and last sentence of cross examination this witness demolished his immediately preceeding statement. No further cross examination was directed to clarify which of these two contradictory statements are correct, true and supported by medical Jurispudance by some reputed Author. As such it cannot be said that the court below committed any error in holding that the death of the deceased could not be caused due to fall and fracture of femur which was the result of fall of the deceased. If this is so then the direct or remote nexus between the accidental injury and the cause of death of the deceased could not be established. It would not be ut of place to mention that it was not a case where immediately after the accident the deceased received cardiac arrest or failure. The accident took place on 19.4.1976. Thereafter the deceased was taken to quake, namely, bone setter who suspected that it was not a fracture, but dislocation of femur bone. He remained under treatment of bone setter for few days. The bone setter advised 90 days complete rest. Then he was examined by Dr. Dilip G. Patel on 26.6.1976. There is evidence that the deceased expired on 26.8.1976. It means near about after four months of the accident the deceased expired. During this period no expert opinion was taken nor any medical opinion was brought on record that the death could occur on account of cardiac arrest or cardiac failure and this cardiac failure could be the direct result of fracture of femur of the deceased. Consequently, the nexus between the accidental injury and the cause of death is not established from any cogent and reliable medical evidence. On the strength of mere oral evidence such

conclusion cannot be drawn as has been suggested by the learned Counsel for the appellant. Consequently, on failure of this condition itself the application was liable to be rejected and as such the Appeal is also liable to be dismissed.

9. Coming to the next point Shri Patel has argued on the basis of Calcutta High Court Judgment in P.E.Devis & Co. (Supra) that the injury received within the reasonable time limit and place, for instance, in case where the workman meets with an accident while in the act of satisfying thirst or satisfying his bodily needs in the use of food drink and even tobacco is to be regarded as employmental injury i.e. to say, injury received in the course of employment. He further contended that the principle underlying is an act which is reasonable and necessary having regard to all the circumstances, though not one which is part of workmen's original duty may be within the sphere of his employment. What is necessary is that there should be a causal connection between the accident and the employment and further that the cause should be a proximate cause and not a very remote cause. But at the same time if a workman in the course of his employment has to be in a particular place and by reason of his being in that particular place has to face a situation in which he receives injuries that fact itself would be a sufficient casual connection between the employment and the accident.

10. Mr.Patel further contended that the Apex Court's verdict in Regional Director, ESI Corporation (Supra) is distinguishable on facts inasmuch as the deceased attended the first shift and in the recess he had gone home for taking lunch and rest. From the evidence on record the learned Counsel contended that it was usual practice of the deceased to go to his home during recess for taking lunch and rest and on these facts and evidence on record he contended that the lunch break or recess will not terminate the course of employment and if injury was sustained by the deceased during recess period while he was going to home for taking lunch it will be deemed to be an injury occurring in the course of employment. He laid stress with force at his command that it amounts to notional extention of the course of employment. He has referred to Para : 8 of the Judgment of the Apex Court in Regional Director, ESI Corporation (Supra) and has also taken aid from the observations in Paras : 11 & 14 of Lord Denning and contended that even in view of expression "reasonably incidental" used by Lord Denning it can be said to some extent that the Apex court's verdict helps the appellants.

7. Lord Denning pointed out and observed that in all those cases the workman was at the premises where he or she worked and was injured while on a visit to the canteen or other place for a break. This observation of Lord Denning was adopted by the learned Counsel for the appellant in support of his contention that the words "other place for a break" would mean home or residence of the employee as well. I am however unable to accept this contention. The expression "other place for a break" has to be interpreted 'Ejusdem Generis' with the expression "on a visit to the canteen". It has to be interpted as a place where tea and coffee can be taken, cold drink can be taken, fast food can be taken and other food can be taken near the place of work and not at the residence of the employee. It would be going too far to stretch the doctrine of notional extention of place of employment or course of employment to the residence of the employee.

12. Even though there is evidence that it was routine course for the deceased to go home for taking lunch and rest during recess but that will not extend the doctrine of notional extention of course of employment. The Apex Court in Regional Director, ESI Corporation (supra) on the facts where the employee while on his way to the factory where he was employed met with an accident which took place 1 k.mtr. away from the place of employment held that the injury suffered by him in the said accident could not be said to have been caused by the said accident arising out of his course of employment.

13. Learned Counsel for the appellant has tried to distinguish this observation on the ground that the employee was coming from his house to attend his first shift in the Mill and the journey from house to the gate of the mill could not be construed to be journey in the course of employment and consequently any accident which occurred during such injury could not be said to be the accident injury in the course of employment. This distinction suggested by the learned Counsel for the appellants, to my mind, does not hold good. As pointed out earlier even in the opinion of Lord Denning, injury caused in the recess period while on visit to canteen or other place for break during recess cannot be stretched to this extent that the injury caused while the deceased was going to his home during recess period would also amount to injury which is reasonably incidental to the course of employment.

14. Lord Denning further illustrated a case where a man is going to or from his place of work on his own

bicycle, or in his own car, he might be said to be doing something "reasonably incidental" to his employment. But if he has an accident on the way, it is well settled that it does not arise out of and in the course of his employment. Even if his employer provides the transport, so that he is going to work as a passenger in his employer's vehicle (which is surely "reasonably incidental" to his employment), nevertheless, if he is injured in an accident, it does not arise out of and in the course of his employment. It needed a special "deeming" provision in a statute to make it deemed to arise out of and in the course of his employment.

15. Shri S.R.Shah has rightly pointed out from the evidence on record that the route adopted by the deceased from the place of his work to his residence was not the usual route because there is no evidence on record that the deceased on every occasion used to get down from the bus at Model Cinema and then he used to go to Balahanuman and from there he had to reach his residence. If such a long route was chosen by the deceased it cannot be said that the injury sustained by him was on account of accidental injury which he sustained in the course of his employment. The place of residence of the deceased was Kalupur, Ahmedabad. Shri Shah has therefore rightly contended that the deceased took circutous route to reach his residence and such circutous route could not be expected to be reasonable place of break during recess.

16. In view of the above discussions I am in agreement with the reasonings and findings of the lower Court that the deceased died of disease which had no connection with his employment and no connection whatsoever with the injury he had, if any, sustained by accident on that day viz. on 19.4.1976. I am further of the view that the theory of notional extention of employment was rightly not adopted by the court below on the facts and circumstances of the case. Since the injury cannot be said to have occurred in the course of employment the Court below, for the reasons stated above, committed no illegality in rejecting the application. The Appeal has, therefore, no merit and is liable to be dismissed.

The Appeal is dismissed with no order as to costs.

sd/-

Date : March 23, 2000 (D. C. Srivastava, J.)

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